

1 **UNITED STATES DISTRICT COURT**2 **DISTRICT OF NEVADA**3
4 United States of America,

2:14-cr-0318-JAD-PAL-1

5 Plaintiff/Respondent

Order Dismissing § 2255 Motions

6 v.

[ECF Nos. 24, 25, 31]

7 Miguel Angel Luna-Rugama,

8 Defendant/Petitioner

9
10 After his 2015 conviction for being a deported alien found unlawfully in the United States
11 in violation of 8 U.S.C. § 1326, defendant Miguel Angel Luna-Rugama challenged his conviction
12 under 28 U.S.C. § 2255.¹ He then moved to voluntarily dismiss his § 2255 motion under Rule
13 41(a) of the Federal Rules of Civil Procedure.²

14 Although the government disputes that an FRCP 41(a) dismissal is appropriate, I find that
15 it is. Rule 12 of the Rules Governing Section 2255 Proceedings allows the court to apply the
16 Federal Rules of Civil Procedure “to the extent that they are not inconsistent with any statutory
17 provisions or” the Section 2255 Rules. Rule 3 of the 2255 Rules provides guidance for
18 dismissing a motion “[i]f it plainly appears from the motion, any attached exhibits, and the record
19 of prior proceedings that the moving party is not entitled to relief,” but it offers no course of
20 action for a defendant to voluntarily dismiss his 2255 challenge before the court has evaluated its
21 merits. I thus find that FRCP 41(a) fills a gap in the 2255 Rules and supplies a vehicle for the
22 relief that the defendant seeks.

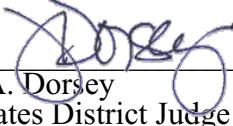
23 Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion for Voluntary
24 Dismissal of Pending Motion to Vacate, Set Aside, or Correct Criminal Convictions and
25 Sentence Pursuant to 28 USC § 2255 [ECF No. 31] is **GRANTED**;

26
27 ¹ ECF Nos. 24, 25.

28 ² ECF No. 31.

1 IT IS FURTHER ORDERED that defendant's § 2255 motions [ECF Nos. 24, 25] are
2 DISMISSED and all remaining deadlines are VACATED.

3 DATED: July 24, 2017.

4 
5 Jennifer A. Dorsey
6 United States District Judge